IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 648 OF 2003

IN

MISC. PET. (LDG.) NO. 111 OF 2003

IN

TESTAMENTARY SUIT NO. 1 OF 2002

Ravi Mauruti Shingre ... Petitioner.

vs.

Ratnakar Vasant Bagve . .. Respondent.

Mr. A.J. Shobhawat for petitioner.

Mr. B.G. Saraf for respondent.

CORAM : S.U. KAMDAR, J.

DATE : 15TH JULY, 2005.

P.C.

. The present notice of motion pertains to the estate of the deceased Miss Dr. Usha Vasant Bagve who expired on 9.10.2001. The applicant in the present motion has set up a Will dated 25.9.2001 purported to have been executed by the said deceased under which all the properties of the said deceased supposed to have been bequeathed to the petitioner herein.

2. It is an admitted position that the deceased has died within a period of 14 days of the so called purported Will which has been propounded by the petitioner herein. It is also an admitted position that the deceased died in the hospital namely, Ashirwad Heart Hospital. The petitioner is purportedly claiming to be the adopted son of the said deceased under the adoption ceremony which is supposed to have taken place on 14.3.1978. The respondent herein is the nephew of the deceased and also is claiming the properties of the said deceased on the basis of intestate succession. The deceased has left two properties, namely, (i) Bagwe Mansion, situated at Plot No. 32, Dadar-Matunga Estate, Vincent Lane, Dadar (W), Mumbai - 14, and (ii) Room Nos. 6 to 10 on the ground floor of Bagwe Hospital, K.C. Bldg., Opp. S.N.D.T. College, Cama Lane, Ghatkopar (W), Mumbai - 86 from where the deceased was running a nursing home. In respect of first property the respondent is in possession whereas in respect of the second property he is claiming to be in possession.

3. The petitioner claims to be the adopted son has taken possession of the said hospital and is purportedly running the nursing home thereat. Admittedly the petitioner is not a qualified doctor for running the said nursing home but he contends

that there are two other doctors who are employed by the deceased and they are running the said hospital.

4. In my opinion, in the present case, in the aforesaid circumstances, properties are required to be protected. It is not possible to permit the petitioner as an adopted son to run the hospital and earn the income therefrom without the will being probated. It is equally not possible to permit the respondent to be in possession of the tenanted premises. In the aforesaid circumstances, it is necessary in the present case that the Receiver should be appointed. The Court Receiver, High Court, Bombay, is appointed as the Receiver with the direction not to dispossess anybody from the disputed premises. The Court Receiver, High Court, Bombay, is further directed to appoint the tenants as his agents in respect of the first property and the Receiver shall also be liable to pay the the rent, electricity charges, etc., from the rent recovered by him. The Receiver is directed to pay all the taxes and outgoings after recovering the rent in respect of the said property. The Court Receiver, High Court, Bombay is directed to take possession of the Bagawe Hospital and appoint a person who is the highest bidder as an agent of the said hospital on condition of no security but on payment of royalty charges. The Receiver shall maintain the account of the royalty received from

the said hospital premises.

5. With the aforesaid orders, the present motion is disposed of. However, there shall be no order as to costs.